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DIGEST OF PENNSYLVANIA WATER POLLUTION CONTROL LEGISLATION

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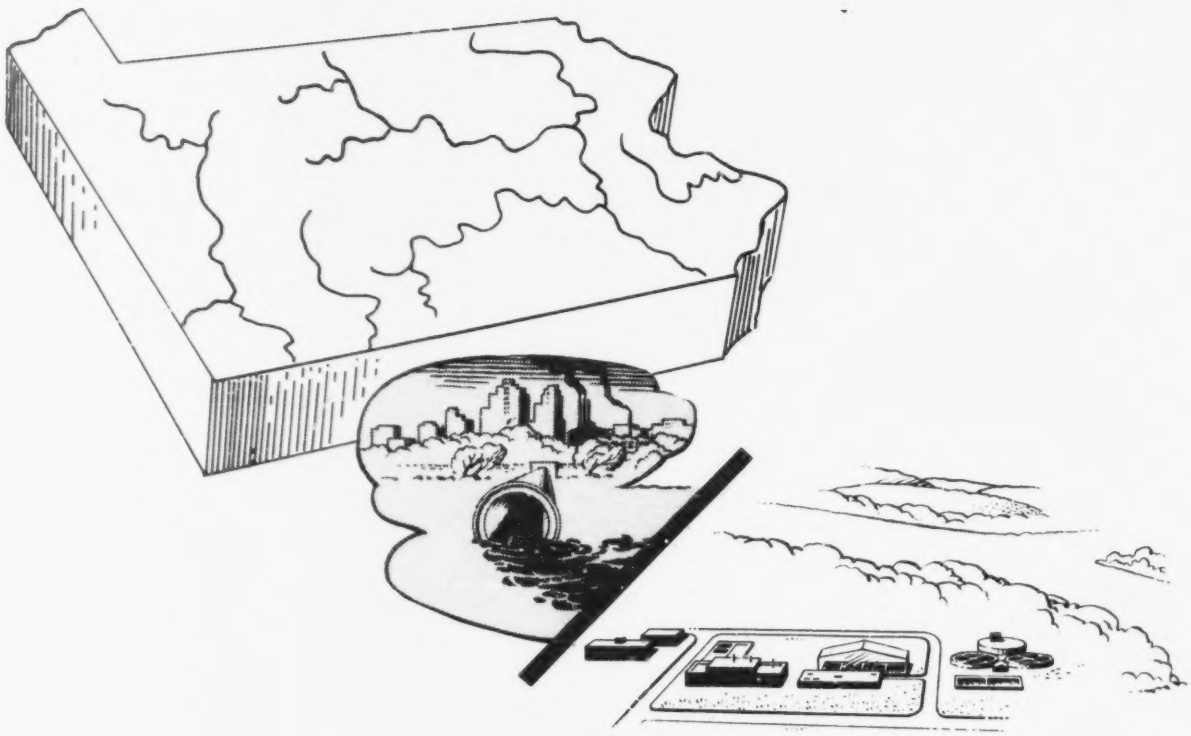

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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

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DIGEST OF PENNSYLVANIA WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The Sanitary Water Board in the Department of Health, has the primary function of controlling water pollution (71 P.S. 540). 1/

The Department of Health acts as the enforcement agent for the Board. It makes inspections, conducts investigations and does such other acts as the Board directs. Between sessions of the Board, the Department has the power to issue such orders and take such action, within the powers of the Board, as the circumstances may require, but any such order or action may be revoked by the Board at its next session. The Department exercises control over water supplied to the public and issues water works permits therefor (71 P.S. 539).

The Act defines "pollution" as noxious and deleterious substances rendering unclean the waters of the State to the extent of being harmful or inimical to the public health, to animal or aquatic life, or to the use of such waters for domestic water supply, recreation, or industrial purposes (35 P.S. 691.1).

"Clean waters" are defined to mean waters which are, on the effective date of the Act (June 22, 1937), unpolluted and free from any discharge or drainage of industrial waste and from any authorized discharge or drainage of sewage (35 P.S. 691.306).

A 1953 Act of the Legislature authorized the payment from State funds to municipalities and municipal authorities which have provided sewage treatment facilities since 1937. Annual payments consist of amounts up to 2% of the cost of those facilities toward the cost of operating, maintaining, and meeting other expenses of such facilities (1957 Cum. Supp., 35 P.S. 701).

1/ Citations in this digest refer to Purdon's Penna. Statutes Annotated (per. ed.) and the 1957 Cumulative Supplement thereto, unless otherwise indicated.

II. ADMINISTRATIVE ORGANIZATION

Sanitary Water Board

1. Composition and organization

The Board is composed of the Secretary of Health, who is the Chairman, the Secretary of Forests and Waters, the Secretary of Mines, the Executive Director of the Fish Commission, and three other members. Four members constitute a quorum (1957 Cum. Supp., 71 P. S. 149).

2. Powers and duties

a) Setting pollution standards

The Board is authorized to establish pollution standards for industrial waste discharges (35 P.S. 691.1).

b) Issuance of permits and review of plans and specifications

All plans, designs and other relevant data for the construction of any new sewer system, the extension of an existing sewer system, or for the erection, construction and location of any treatment works or intercepting sewers, must be approved by the Board. Any such construction or operation without a written permit is a nuisance and may be abated (35 P.S. 691.207, 691.308). The Board also issues permits for the discharge of sewage when it finds that such discharge is not injurious to the public health, animal or aquatic life, or for use for domestic or industrial consumption or recreation. Such permits contain the conditions and time during which the discharge may be permitted. Before such permits become operative, they must be filed in the Recorder of Deeds office for the county where the sewer outlet is located (35 P.S. 691.206). The permits authorized herein are subject to revocation or modification on due notice, after investigation and hearing and an opportunity of the interested parties to be heard thereon. The time within which the discharge of

sewage or the treatment of sewage in the treatment works is to be discontinued, may be set by the Board and must be stated in the notice. In no case can it exceed 2 years in the case of a municipality, or a reasonable time, not to exceed 1 year, in the case of a person (35 P.S. 691.208).

Before any existing or new coal mine may be opened or reopened, and before any existing coal mine may be continued in operation, a plan of the proposed drainage and disposal of industrial wastes, and acid mine drainage must be approved by the Board in consultation with the Department of Mines (35 P.S. 691.313).

c) Enforcement

The discharge of sewage or treated sewage after the revocation, modification or change in any permit issued by the Board is a nuisance and subject to abatement (35 P.S. 691.209).

When the Board is of the opinion that the discharge of sewage by a municipality or person has become inimical or injurious to the public health, animal or aquatic life, or to the use of the water for domestic or industrial consumption or recreation, it may issue an order for the discontinuance of such discharge. If the discharge is into a stream impregnated with acid coal mine drainings, such discharge may be permitted if it does not create a condition inimical to the public interest (35 P.S. 691.202).

Orders for discontinuance of existing discharges of sewage by a municipality must be by notice in writing, after investigation and hearing, served on the corporate authorities of the municipality; such notice must state the time, not to exceed 2 years, when the discharge is to be discontinued. When such notice is against a person, it must be in writing, served, and must specify a reasonable time not to exceed 1 year,

for the discontinuance of the discharge. The discharge of sewage after the expiration of the time fixed in the notice is a nuisance and may be abated. Violators are also subject to a fine of from $25.00 to $100.00 for each offense, and a further fine of $10.00 for each day the offense is maintained. Those in default of payment of the fine and costs are subject to imprisonment in the county jail 1 day for each dollar of fine and costs unpaid (35 P.S. 691.203, 691.204).

Any municipality upon whom an order of the Board is served to abate its discharge of untreated or inadequately treated sewage must, unless said order is reversed on appeal, take steps for the acquisition, repair, etc. of a sewer, sewerage system, or sewage treatment works. The cost of the project is to be paid if no funds are available by the issuance of bonds (35 P.S. 691.210).

Persons discharging industrial waste into State waters must discontinue such discharge upon notice, after investigation, when the Board declares such discharge is or may become inimical or injurious to the public health or to animal or aquatic life, or prevent the use of waters for domestic, industrial or recreational purposes. If such discharges are inimical to the purposes mentioned, it is deemed unlawful and a nuisance whether declared so by the Board or not (35 P.S. 691.302).

No one is permitted to construct or operate any establishment which results in the discharge of industrial wastes into any of the State waters and thereby cause pollution, unless such person first provides adequate treatment works for such industrial wastes, approved by the Board, so that the effluent thereof is not inimical or injurious to the public health or to animal or aquatic life, or prevent the use of water for domestic, industrial or recreational purposes. However, when, in the

opinion of the Board, such industrial waste does not interfere with these uses, it must grant a permit for such discharge. No permit is ever to be issued by the Board authorizing the discharge of untreated industrial waste into the clean waters of the State. For definition of "clean waters" see item I above (35 P.S. 691.307).

The discharge of industrial waste or acid mine drainage into any State waters in violation of the Act is a misdemeanor and violators may be fined a sum not less than $100.00 nor more than $5,000.00, and be imprisoned in the county jail for not more than 1 year (35 P.S. 691.309).

It is unlawful and a nuisance to discharge acid mine drainage into clean waters of the State unless the State has failed to construct and operate pipes to receive such drainage pursuant to plans approved by the Board (35 P.S. 691.310).

Upon complaint made in writing to the Board, it investigates alleged pollution of State waters and institutes appropriate proceedings under the Act to discontinue any such pollution if the offense complained of constitutes a violation of the Act (35 P.S. 691.604).

The Board, after notice and public hearing, is empowered to promulgate and enforce reasonable orders and regulations for the protection of any source of water, approved by the Health Department, for present or future supply to the public, and to prohibit the pollution of any such source of water (35 P.S. 691.501). Violation of orders or regulations of the Board subjects the violator to a monetary penalty which, if not paid may render him subject to imprisonment; such violation is also considered a nuisance and may be abated (35 P.S. 691.502. 691.503).

All pollution declared to be nuisances or maintained contrary to the provisions of the Act is abatable and, except in cases of emergency, the Court may fix a reasonable time within which it is to be abated (35 P.S. 691.601). In cases of emergency, a mandatory preliminary injunction or special injunction may be issued by the Court (35 P.S. 691.602). Any order, decision, rule or regulation made by the Board is subject to appeal by an aggrieved party to the Court of Common Pleas of Dauphin County, within 30 days from its entry. Orders of the Board, except an order to discontinue the discharge of industrial waste, are not stayed by the filing of an appeal (35 P.S. 691.605).

When an order of the Board directing any corporation to cease discharging industrial waste into any State waters would materially affect the operation of such corporation's business, it may apply to the Board for an order granting it the right to condemn certain needed land in order to comply with such order (1957 Cum. Supp., 35 P.S. 691.314).

d) Conduct of surveys, investigations and research

The Board is authorized to make a complete survey of the waters of the State in order to ascertain the extent of pollution in each of such waters and the remedies to be employed to purify them. It is given power to adopt and enforce such rules and regulations necessary for the protection of the purity of the waters of the State, to purify those now polluted, and to assure the proper and practical operation and maintenance of treatment works approved by it. Violation of the rules and regulations of the Board constitutes a nuisance (35 P.S. 691.304). The Board is further empowered to investigate and ascertain all facts in relation to the pollution of State waters by industrial waste. It is authorized to conduct scientific experiments and researches under its supervision or

in colleges and universities for the purpose of ascertaining reasonable and practical means for the treatment of industrial waste (35 P.S. 691.305).

e) Administrative powers

The Board is authorized to hold hearings, issue orders and permits, acquire easements for diversion of acid mine drainage, make rules and regulations, enter upon property for the purpose of making surveys and examinations, investigate complaints and institute enforcement proceedings (35 P.S. 691.202 , 691.203, 691.206, 691.304, 691.307, 691.312, 691.403, 691.604).

3. Preservation of existing rights and remedies

The Act provides additional and cumulative remedies to abate pollution of the waters of the State. Nothing in the Act abridges legal rights of action or remedies, nor is any provision of the Act, or the granting of any permit or any act done by virtue of the Act to be construed as estopping the State, persons or municipalities, in the exercise of their legal rights from proceeding in the courts to suppress nuisances, or to abate any pollution or enforce common law or statutory rights (35 P.S. 691. 701).

4. Exemptions from operation of Act

The provisions of the Act do not apply to acid mine drainage from coal mines until such time as, in the opinion of the Board, practical means for the removal of the polluting properties of such drainage becomes known (35 P.S. 691.310).

5. Statement of policy; severability clause

The discharge of sewage or industrial waste or any noxious and deleterious substances into the waters of the State, which is or may become inimical and injurious to the public health, or to animal or aquatic life,

or to the uses of such waters for domestic or industrial consumption or for recreation, is declared not to be a reasonable or natural use of such waters, to be against public policy and to be a public nuisance (35 P.S. 691.3).

The Act contains a severability clause (35 P.S. 691.2).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is a misdemeanor for anyone to occupy living quarters in a building over a natural lake or pond, the waters of which is used for human consumption, or to deposit refuse, garbage or any other foreign substances in such waters. Violators are subject to a fine of $300.00 or imprisonment for 6 months, or both (1957 Cum. Supp., 35 P.S. 731). Violators may also be enjoined (1957 Cum. Supp., 35 P.S. 732).

It is unlawful for anyone to place in any State waters any explosive or any other substance which is injurious or inimical to the public health or to animal or aquatic life, or to the uses of water for industrial purposes or for recreation. Violators are subject to a fine, and if not paid, are subject to imprisonment (35 P.S. 691.401).

The failure to file plans for the construction of waterworks or to operate the same without a permit issued by the Secretary of Health is punishable by a fine of $500.00, and a further penalty of $50.00 for each day the works are in operation (35 P.S. 715).

No one is permitted to place in any State waters any electricity, explosives or any poisonous substances for the purpose of catching or killing fish; or to allow any other substance deleterious or poisonous to fish to be washed or emptied in such waters unless the Pennsylvania Fish Commission or the Court finds that reasonable measures were taken to abate and prevent pollution. This section does not apply to agents of the Penn-

sylvania Fish Commission in their work of fish eradication or control (1957 Cum. Supp., 30 P.S. 200).

Manufacturers are required to erect tanks or receptacles for washings of iron, ores, coal, hides, etc. to prevent sediment from passing into streams (30 P.S. 361).

The willful entry upon enclosed land upon which there is erected a dam, reservoir, pond or other artificial means for storing water used for drinking purposes and the pollution thereof is a misdemeanor, punishable by a fine not exceeding $500.00, or by imprisonment not exceeding 1 year or both (18 P.S. 4640).

IV. INTERSTATE COMPACTS

Pennsylvania is a member of the Interstate Commission on the Delaware River Basin (32 P.S. 815.1-815.35; 1957 Cum. Supp., 32 P.S. 815.46-815.49a5).

Pennsylvania is also a party to the following water compacts.

1. Ohio River Valley Water Sanitation Compact (32 P.S. 816.1-816.7).
2. Potomac River Basin Compact (32 P.S. 741-743).